THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.7242 OF 2006

DATED: 12.10.2006

BETWEEN:

Matta Venkateshwara Reddy … petitioner

And

The Govt., of A.P.,
Secretary, Panchayat Raj Department,
Hyderabad
And others … Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.7242 OF 2006

ORDER:

Heard the counsel.

Counter affidavit is filed by R.3. Both the counsel made a request to dispose of the writ petition.

The writ petition is filed for a writ of mandamus declaring the action of the first respondent in not considering appeal/representations dated 13.5.2005 and 17.3.2006 and not granting the period of non operation of sand quarrying at Pedda Mandava Reach, Mudigonda Mandal, Khammam district as arbitrary, illegal unjust and violative of principles of natural justice and consequently direct the respondents to consider the representation and pass orders granting period of non-operation of sand quarrying in Peddamandava Reach, Mudigonda mandal, Khammam district and pass such other suitable orders.

It is stated that in pursuant of the notification issued by the District Level Committee, the area Munneru sand point at Pedda Mandava Reach, Mudigonda mandal was auctioned on 10.5.2000 for a period from 10.5.2002 to 10.9.2003 and the petitioner became the highest bidder. As the agreement was not entered, the petitioner filed W.P.No.25251 of 2001 and the same was allowed on 29.1.2003. The committee resolved to grant lease for the period commencing from 27.7.2003 to 26.7.2004 and while quarrying operations were taking place an order was passed by the District Collector in

Proc.No.P3/796/2003, dated 29.10.2003 to stop quarrying. In pursuance to various inspection reports of ground water, the District Collector passed orders in Proc.No.P3/796/2003, dated 19.11.2003 permitting to undertake quarrying operations. It is also stated that while quarrying operations were taken a public interest litigation was filed in W.P.No.22255 of 2003 and this court had stayed the quarrying operations and the writ petition was allowed on 8.1.2004 directing the District Level Committee to take decision after hearing and till then to stop quarrying as the area falls under category III of A.P. Water Land and Trees Act 2002. It is also further stated that the District Level Committee passed orders in proceedings Rc.No.P3/796/99, dated 13.12.2004 that in view of the report of Deputy Director Ground Water, Khammam the Mudigonda Mandal falls under category III of A.P. Water Land and trees Act 2002 and the quarrying of sand is banned and accordingly, negatived the request of the lease holder for allowing to quarry the sand for the balance period and hence, the lease was terminated. It is also stated that pursuant to the orders of the District Level Committee dated 13.2.2004, the petitioner made representation to consider his case when the ground water level is improved. The inspection was carried by the Ground Water Department and a report was submitted in proceedings Letter No.1141/T/SM/04-05 dated 11.5.2005 that the sand quarrying can be permitted in Pedda Mandava Village, with the following conditions:

> " a. The sand quarry at Peddamandava Village is consider for removal of sand restricted upto one meter thick only.
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> b. The sand lease holders shall not carryout quarrying within 500 meters of any existing ground water structures either for irrigation, drinking water purpose and anicut as per A.P. Water Land and Trees Act 2002.
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> c. The sand quarrying shall not be permitted within 15 meters or 1/5 of the width of the stream bed from the

bank which ever is more.

d. The progress report of sand mining shall be sent to District Sand Committee, Mandal Authority and Ground Water Department every 15 days.

e. The removal of the sand will be regularly monitored and keep the assemcy of river under District Sand Committee or Mandal Authority.

It is also stated that as there is increase in ground water and the report is submitted by the Department, the petitioner again represented to second and third respondents for considering his case and it is stated that the petitioner was informed that his case cannot be considered as the lease is terminated by an order dated 13.2.2004 and immediately the petitioner preferred the appeal to Government on 13.5.2005 to grant him period of non-operation. It is also stated that no action was taken and the petitioner had submitted a representation on 17.3.2006 for hearing the matter and to take appropriate decision. Unfortunately no action had been taken in this regard despite the representations. Even recent time ground water report if taken, there is improvement in the ground water and it suggested permitting sand quarrying. Thus, the specific stand is that several such cases are being considered, but the case of the petitioner is not being considered by the first respondent.

In the counter affidavit filed by the third respondent it is stated that the orders were granted according permission for quarrying sand in Munneru river at Pedamandava village of Mudigonda mandal to Sri M.Venkateswara Reddy, resident of Gandhasiri for a period from 27.7.2003 vide proceedings No.P3/796/99, dated 25.7.2003 by the District Collector, and the Executive Engineer, Special Division-II, Vijayawada vide letter No.DB/D1/767M/dt.15.10.2003 had reported that the sand quarrying operations are being done on the right side towards land portion and groyan portion. He had further observed that

it is highly objectionable to disturb that portion in view of causing diversion of flow in the Munneru towards right side. While enclosing the plan in consultation with the approval of River Conservator authority, i.e., Executive Engineer, Special Division II, Vijayawada he had finally recommended to stop the mining of sand in the first instance till the joint inspection of site is made as the quarrying of the sand may create problems to the safety of the dam because of the its age as it is 105 years old structure. It is further stated that this Court passed orders in W.P.M.P.No.27861/2003 in W.P.No.22296 of 2003 dated 22.10.2003 directing that the District Collector, Khammam shall take all steps if necessary coercive steps, to stop all illegal mining and quarrying sand in Pedamandava village, Mudigonda mandal, if the District Collector comes to the conclusion that sand quarrying is likely to damage the existing super-structure of Polampalli Reservoir dam, and it is open to him to stop the quarrying forthwith. It is also stated that in view of pending of joint inspection of the technical team the quarrying of sand of Pedamandava village sand reach had been stopped with immediate effect vide proceedings Rc.No.P3/796/99 dated 29.10.2003 which is in order. The inspection committee had submitted the report on 6.11.2002 and the same had been examined with reference to the safety of Polampally reservoir and decided to issue conditional lease order to the petitioner and accordingly orders had been issued to the petitioner for quarrying of sand vide proceeding No.P3/796/99 dated 19.11.2003.

It is also further stated that the Hon'ble High Court of A.P., in its judgment dated 8.1.2004 in W.P.No.22255 of 2003 and 22296 of 2003 passed orders to the effect that the District Level Sand Committee is competent to decide on any matter or problem arising during the course of implementation of rules. Therefore, the matter is left open to be considered and examined and adjudicated by the District Level Sand Committee. Accordingly, the District Level Sand Committee is

directed to bear the petitions and the lease and then proceeded to take a decision considering the facts and circumstances of the case and if necessary after consultation with the concerned respondent authorities. In compliance to the said orders of this court, the District Level Sand Committee passed resolution in the meeting held on 11.2.2004 after hearing the petitioners and lease holder, to the effect that in view of the report of Deputy Director, Ground Water, Khammam, the Mudigonda Mandal is falling in the category No.III and as per A.P.Water Land and Trees Act the quarrying of sand is banned and accordingly decided to negative the request of the lease holder for allowing to quarrying the sand for the balance period. Accordingly, the quarrying of sand at pedamandava Gram Panchayat were terminated vide Proceedings Rc.No.P3/796/99, dated 13.2.2004 which is in terms of the rules with immediate effect. Specific stand was taken that the District Level Sand Committee had passed resolution in the meeting held on 11.2.2004 after hearing the petitioners and lease holders and in view of the report of the Deputy Director, Ground Water, Khammam, the Mudigonda Mandal is falling in category No.III of A.P. Water Land and Trees Act and the request of the petitioner for allowing to quarry the sand for the balance period had been negatived. Further specific stand was taken that the request of the individual for leasing out sand from Pedamandava Gram Panchayat needs no consideration and the District Level Committee had negatived the request of the petitioner for quarrying sand in view of the report of the Deputy Director, Ground Water, Khammam letter No.1141/T/SM/04-05 dated 11.5.2006, further according to the report of Regional Vigilance and Enforcement Officer, Warangal Lr.R.c. No.25/RVEO/ENG/WGL/03, dated 30.4.2004 to cancel the sand quarry held by Sri M.Venkateswara Reddy and to forfeit the remaining bid amount and security deposit for illegal quarrying the sand before execution of lease deed. The further

allegations also had been denied.

Thus, specific stand was taken by R.3 that in view of the fact that the same already had been rejected, the request made by the petitioner need not be considered.

In the light of the specific stand taken by the respective parties in the affidavit filed in support of the writ petition and the counter affidavit, inasmuch as it is stated that the ground water level was improved, subject to certain conditions, the request of the petitioner can be considered and in view of the fact that it is stated that the appeal/representations dated 13.5.2005 and 17.3.2006 are said to be pending before the first respondent, this Court is of the considered opinion that the writ petition be disposed of directing the first respondent to consider the appeal/representations dated 13.5.2005 and 17.3.2006, in accordance with law, in the light of the facts referred to supra and the contents of the said representations dated 13.5.2005 and 17.3.2006 and pass appropriate orders within a period of four weeks from the date of the receipt of this order.

With the above direction, the writ petition is disposed of. No order as to costs.

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12.10.2006.

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